

is to be received, we think, as the correct doctrine upon this subject.

But the true question presented for our consideration, on this branch of the case, and that to which the argument of the counsel has been addressed, is: whether assuming the partnership to have been solvent, on the 20th of May, 1825, the period of its dissolution, the interest of Samuel Hayes in the partnership lands is to be treated as real estate, descendible to his heirs, and chargeable with dower; or as changed for all purposes into personal estate, and distributable as such among his personal representatives?

It cannot be denied, that upon this question, there has been, both in England and the United States, great diversity of judicial opinion and decision. But the case before us is clear of any agreement between the partners, direct or implied, impressing upon their real estate the character of *personalty*, and under such circumstances we consider the true rule to be, that the interest of the deceased partner in the partnership lands is to be treated as real estate, and that the appellant is entitled to a suitable allowance out of the proceeds of the sales of these lands, as an equivalent for her dower; provided, of course, the partnership shall be found to have been solvent at the period of its dissolution.

The doctrine that real estate purchased with the partnership funds for its use, and on its account, is to be regarded in a court of equity, as the personal estate of the company for all purposes of the partnership, stands upon a familiar and just principle. It is the clear case of an implied or constructive trust, resulting from the relation which the partners bear to each other, and from the fact that the estate was brought into the firm, or purchased with the funds of the partnership, for the convenience and accommodation of the trade. For this reason, in whosoever name the legal title may reside, the estate is held, in the eye of a court of equity, for the use of the partners as the *cestui que trusts*, and if a partner dies, the legal estate of which he was seized as a tenant in common passes to his heirs or devisees, clothed with a similar trust in favor of the surviving